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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

TODD NICOL, JACK RILEY, DAVID MURRAY, IAN MURRAY, THINH TRAN, JOHN NGUYEN, and THANH TRAN, Plaintiffs, vs. KA'ANAPALI GOLF ESTATES COMMUNITY ASSOCIATION, INC.; STEVEN SCOTT; JONATHAN ABER; BRENDA BOYLE; ROBERT RAGSDALE; THAD HENRY; and JEFF HALPIN, individuals;; CLASSIC RESORTS LIMITED, a Hawaii corporation; DESTINATION MAUI, INC., a Hawaii corporation; JOHN	) CIVIL NO. __________) (Other Non-Vehicle Tort))) COMPLAINT FOR DAMAGES) AND DECLARATORY AND) INJUNCTIVE RELIEF; DEMAND) FOR JURY TRIAL; SUMMONS

DOES 1-20; JANE DOES 1-20; DOE PARTNERSHIPS 1-20; DOE CORPORATIONS 1-20; DOE ENTITIES 1-20; and DOE GOVERNMENTAL UNITS 1-20,

Defendants.

COMPLAINT FOR DAMAGES AND DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Todd Nicol, Jack Riley, David Murray, Ian Murray, Thinh Tran, John Nguyen, and Thanh Tran (hereinafter referred to as "Plaintiffs"), hereby complain and allege, by and through their undersigned counsel, as follows:

PERSONAL JURISDICTION AND VENUE

SUBJECT MATTER JURISDICTION

1. The Plaintiffs are not citizens of this State and all Plaintiffs are making one or more claims that place an amount in controversy far in excess of $75,000.00 for each Plaintiff, including claims for damages, and injunctive and declaratory relief. None of the Plaintiffs are domiciled in the State of Hawaii, as evidenced by their holding employment, maintaining family residences and/or enrolling school age children in schools located in states other than Hawaii. *See* Kanter v. Warner-Lambert Co., 265 F.3d 853, 857 (9th Cir. 2001) (stating that a person's domicile is the place that he resides with the intention to remain) (superseded by statute on unrelated grounds). All of the Defendants are citizens of

Hawaii and none of the Defendants is a citizen of the same state as any Plaintiff. With respect to the corporate defendant, for diversity purposes, "a corporation is a citizen of (1) the state under whose laws it is organized or incorporated; and (2) the state of its 'principal place of business.' 28 U.S.C. § 1332 (c)(1)." Davis v. HSBC Bank Nev., N.A., 557 F.3d 1026, 1028 (9th Cir. 2009). Based on information and belief the corporate defendants are incorporated under Hawaii law and maintain principle places of business in the State of Hawaii. To determine a corporation's principal place of business, Federal courts must utilize the "nerve center" test. Hertz Corp. v. Friend, 130 S. Ct. 1181, 1183 (2010). Under the "nerve center" test, a corporation's principal place of business is "the place where a corporation's high level officers direct, control, and coordinate the corporation's activities." Id. Per the U.S. Supreme Court, a corporation's nerve center "should normally be the place where the corporation maintains its headquarters – provided that the headquarters is the actual center of direction, control, and coordination." Id. at 1184. Therefore, this Court has original jurisdiction pursuant to 28 U.S.C. § 1332 (diversity of citizenship). In addition, all Plaintiffs have claims under the laws and Constitution of the United States and, therefore, this Court has original jurisdiction pursuant to 28 U.S.C. § 1331 (federal question).

2. Venue in this District is proper because all Defendants are citizens of the District, and pursuant to 15 U.S.C. § 22 and 28 U.S.C. § 1391, as the real

property, transactions and tortious conduct alleged herein arise within this State. Defendants are subject to the jurisdiction of this Court because they are Citizens of this State, conduct business in this State, and the tortious conduct alleged herein occurred within this State.

3. This Court also has subject matter jurisdiction over this action pursuant to the U.S. Constitution due to the unconstitutional taking of real property rights by wrongfully adopting and recording a 2014 Amendment to the Declaration of Covenants, Conditions and Restrictions ("CC&Rs") of the KA'ANAPALI GOLF ESTATE COMMUNITY ASSOCIATION, INC. (hereinafter "KGECA"). The Defendant KGE board members adopted the 2014 Amendment, in violation of the law and without due process, and have used the 2014 Amendment against Plaintiffs and other owners, harassing and attempting to intimidate KGE owners and to wrongfully seize their property, violating owner's constitutionally protected rights, including the rights of privacy and freedom of association (by, inter alia, requiring the owner of record to be present for family members to use the property), in an effort to require owner occupancy only, and to strictly prohibit owners of vacation homes from receiving rental income and further for the purpose of converting the affected properties from the intended second-home vacation community marketed to them by the developer and for which Plaintiffs paid valuable consideration into an entirely different community that suits Defendants'

personal desire for a residential community of full-time residents living in the homes year around. Plaintiffs have been the victims of unlawful enforcement practices and made subject to unannounced searches and inspections of homes to ensure "covenant enforcement", violating owners' rights of privacy and quiet enjoyment. Defendant KGECA and its Board members have assumed police powers and coordinated Code enforcement with the County of Maui, thereby becoming quasi-governmental state actors subject to all of the laws and protections afforded under 42 USC § 1983. Further, Defendant KGECA is a creature of state law and exists as a quasi-governmental entity operating much like a government at a local level and providing much of the services historically and traditionally derived from municipal government and, therefore, is subject to 42 USC § 1983. In addition, to the extent Defendants seek judicial enforcement of their unlawful fines and acts, including enforcing the fraudulently adopting the 2014 Amendment that deprived Plaintiffs and other owners of important property rights, and Defendants presently have sued one owner in two separate lawsuits, such that the doctrine of judicial taking results in the application of the United States Constitution, 42 USC § 1983, and other federal laws to the conduct and actions of all Defendants.

PARTIES

4. Plaintiffs are or were each owners of certain parcels of real property

located in the Ka'anapali Golf Estates in the County of Maui, State of Hawaii, and each are members of the Association of Apartment Owners ("AOAO") under Hawaii law.

5. Plaintiff TODD NICHOL is, and at all times relevant to this Complaint was, a resident of the State of California, residing in the County of Los Angeles.

6. Plaintiff JACK RILEY is, and at all times relevant to this Complaint was, a resident of the State of California, residing in the County of Ventura.

7. Plaintiff DAVID MURRAY is, and at all times relevant to this Complaint was, a resident of the State of California, residing in the County of San Francisco.

8. Plaintiff IAN MURRAY is, and at all times relevant to this Complaint was, a resident of the State of California, residing in the County of San Francisco.

9. Plaintiff THINH TRAN is, and at all times relevant to this Complaint was, a resident of the State of California, residing in the County of Santa Clara.

10. Plaintiff JOHN NGUYEN is, and at all times relevant to this Complaint was, a resident of the State of California, residing in the County of Santa Clara.

11. Plaintiff THANH TRAN is, and at all times relevant to this Complaint was, a resident of the State of California, residing in the County of Santa Clara.

12. Defendant KA'ANAPALI GOLF ESTATES COMMUNITY ASSOCIATION, INC. is a Hawaii not for profit corporation, formed pursuant to Chapter 414D Hawaii Revised Statutes ("HRS"), as amended, which operates and administers the Ka`anapali Golf Estates Community Association (the "KGE Community"), a community, situate, lying and being at Lahaina, County of Maui, State of Hawaii, established and existing pursuant to Chapter 421J, HRS, as amended, and that certain Amended and Restated of Declaration of Covenants, Conditions and Restrictions for Ka`anapali Golf Estates, dated June 18, 1992 and recorded in the Bureau of Conveyances as Document No. 92-097283 (the "Declaration") as amended and/or restated, and the Amended and Restated By-Laws of Ka`anapali Golf Estates Community Association, Inc., dated June 18, 1992 (the "Bylaws"), including subsequent Declarations and any valid Amendments thereto and acting by and through its Board of Directors.

13. The KGE Community is an Association of Apartment Owners ("AOAO") under Hawaii Law.

14. The KGE Community includes several neighborhood sub-associations including the Vintage, the Summit, the Pinnacle, and Lanikeha.

15. The KGE Community is governed by Chapter 514B ("Condominium Property Act").

16. Defendant STEVEN SCOTT ("SCOTT") is, and at all relevant times

to this Complaint was, an individual and resident of Maui County, State of Hawaii, residing in the KGE Community, and was a member of the Board of Directors for KGECA (the "Board") and is the former President of KGECA, former Voting Member for Lanikeha, and acting as the agent and co-conspirator with the other defendants.

17. Defendant JONATHAN ABER ("ABER") is, and at all relevant times to this Complaint was, an individual and resident of Maui County, State of Hawaii, residing in the KGE Community, and a member of the KGECA Board, and is the current President and Treasurer of KGECA, Voting Member for the Pinnacle, and acting as the agent and co-conspirator with the other defendants. Based on information and belief, Defendant Aber maintains a second home in the Republic of South Africa and has never resided in the continental United States (and specifically, the State of California).

18. Defendant BRENDA BOYLE ("BOYLE") is, and at all relevant times to this Complaint was, an individual and resident of Maui County, State of Hawaii, residing in the KGE Community, and a member of the KGECA Board and Secretary of KGECA, Voting Member for KGE, and acting as the agent and co-conspirator with the other defendants.

19. Defendant ROBERT RAGSDALE ("RAGSDALE") is, and at all relevant times to this Complaint was, an individual and resident of Maui County,

State of Hawaii, residing in the KGE Community, and a member of the KGECA Board, Voting Member for the Summit, and acting as the agent and co-conspirator with the other defendants.

20. Defendant THAD HENRY ("HENRY") is, and at all relevant times to this Complaint was, an individual and resident of Maui County, State of Hawaii, residing in the KGE Community, and a member of the KGECA Board, current Voting Member for Lanikeha, and acting as the agent and co-conspirator with the other defendants.

21. Defendant HENRY was appointed Lanikeha Voting Member by SCOTT and has used that position to personally select, without owner input, two other KGE Board members, Duncan Magee and Norm Kaufman.

22. Defendant HENRY chairs the KGE New Construction Committee ("NCC") which reviews and approves construction plans, including plans for jobs where HENRY is the general contractor, and the jobs of his competitors. Defendant HENRY has an actual and obvious conflict of interest in his role as NCC Chair that he is using to leverage control over Lanikeha allowing him an unfair advantage over his competition.

23. Defendant HENRY also sits on the KGE "Covenants Committee" which is charged with enforcing all rules within the community, including imposing fines on his competitor's construction projects. Defendant HENRY has

an actual and obvious conflict of interest in his role on the Covenants Committee that he is using to leverage control over Lanikeha allowing him an unfair advantage over his competition.

24. Defendant JEFF HALPIN ("HALPIN") is, and at all relevant times to this Complaint was, an individual and resident of Maui County, State of Hawaii, residing in the KGE Community, and a member of the KGECA Board, acting as the agent and co-conspirator with the other defendants.

25. Defendant CLASSIC RESORTS LIMITED ("CLASSIC RESORTS") is, and at all relevant times to this Complaint was, a Hawaii corporation licensed to do business and doing business in the State of Hawaii and in the business of short term vacation rental property management.

26. Based on information and belief, Defendant HALPIN also is an owner and President of Defendant CLASSIC RESORTS.

27. Defendant DESTINATION MAUI, INC., ("DMI") is, and at all relevant times to this Complaint was, a Hawaii corporation licensed to do business and doing business in the State of Hawaii, and with its principal place of business in the State of Hawaii, and the managing fiscal agent of Defendant KGECA, acting as the agent and co-conspirator with the other defendants.

28. Defendants JOHN DOES 1-100, JANE DOES 1-100, DOE PARTNERSHIPS 1-20, DOE CORPORATIONS 1-20, DOE ENTITIES 1-20, and

DOE GOVERNMENTAL UNITS 1-20 (collectively referred to as the "Doe Defendants") are persons or entities that are, among other things, liable for the injuries or damages caused to the Plaintiffs and/or were in some manner conspiring with and related to one or more of the aforementioned Defendants and their true names, identities, capacities, activities, and/or responsibilities are presently unknown to the Plaintiffs or their attorneys.

29. Defendants SCOTT, ABER, BOYLE, RAGSDALE, HENRY, HALPIN, CLASSIC RESORTS, DMI, and the Doe Defendants are collectively referred to herein as the “Defendants”.

30. Plaintiffs are informed and believe and based thereon allege that each of the named Defendants and those fictitiously named, was a co-conspirator with the other defendants and aided and abetted the wrongful acts alleged herein, and or was an officer, director, managing agent, agent, or surety of the other defendants and was acting within the course and scope of that position, agency, or suretyship with knowledge and consent or ratification of each of the other Defendants.

FACTUAL ALLEGATIONS

THE EVOLUTION OF THE KGE COMMUNITY TO AN ASSOCIATION THAT INCLUDES NEARLY 100 CONDOMINIUM UNITS

31. In or about 1990, KGECA was established pursuant to HRS, Chapter 421J, and is governed by that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Ka`anapali Golf Estates, dated June 18,

1992 and recorded in the Bureau of Conveyances as Document No. 92-097283 as amended and/or restated, and the Amended and Restated By-Laws of Ka`anapali Golf Estates Community Association. Inc., dated June 18. 1992 ("CC&Rs").

32. KGECA is a gated community located in the Ka'anapali Golf Resort area originally consisting of approximately 94 vacant lots sold by the developer to owners for the purpose of constructing single family residences primarily for second homes for vacation use.

33. Plaintiffs are informed and believe that during 1999, KGECA annexed certain parcels of real property which now consist of the sub-association called the Summit at Ka'anapali Golf Estates (the "Summit"). The Summit consists of 53 units, including approximately 19 condominium units, used as primary residences and second homes for vacation use. Upon annexation of the Summit condominiums, KGE became the subject of the Condominium Property Act which governs all AOAO's (homeowner associations) that include condominium units.

34. Plaintiffs are informed and believe that during 2000, KGECA annexed certain parcels of real property which now consist of the sub-association called the Pinnacle at Ka'anapali Golf Estates (the "Pinnacle"). The Pinnacle consists of 33 units primarily used as second homes for vacation use.

35. Plaintiffs are informed and believe that also during 2000, KGECA annexed certain parcels of real property which now consist of the sub-association

called the Vintage at Kannapali Golf Estates (the "Vintage"). The Vintage consists of 73 condominium units used as both primary residences and second homes for vacation use. As a result of the annexation of the Vintage, KGE included 91condominium units and continued, and to this day, continues to be governed by the Condominium Property Act.

36. Plaintiffs are informed and believe that during 2003, KGECA annexed certain parcels of real property which now consist of the sub-association called Lanikeha ("Lanikeha"). Lanikeha consists of 132 single family units, which represented the designed "treasured jewel" of KGE, with lots as large as 80,000 square feet (2 acres), its own separate gate within the KGE gate, an elegant community center with a fitness facility, showers, lockers, a swimming pool, barbecue, outdoor seating, activity room, and on-site business office, to be purchased primarily as second home vacation destinations for owners desiring a resort like experience. Specifically set forth in the Lanikeha CC&Rs is the planned development purpose of Lanikeha as a second home destination community that would permit owners to rent their homes in which they made substantial investment, and induced owners to buy parcels and otherwise spend more than they would have to build a second home. Specifically, the Lanikeha CC&Rs provide: "Rental/Leasing of Dwelling Units. An Owner of lot may rent or lease the Owner's Dwelling Unit either directly for its own account or as part of a rental

pool," (Section 15.4(g)), and further contemplates such use by allowing "a group of no more than five unrelated individuals who maintain a common household in a Dwelling Unit, whether on a transient or permanent basis" (Section 1.88). Based on information and belief, Plaintiffs allege that the unlawful conduct of Defendants as alleged herein has defeated said purpose, frustrated the development of Lanikeha, and severely damaged property values of Lanikeha, as evidenced by the fact that more than 100 of the 132 lots within Lanikeha remain undeveloped more than 10 years after purchase, more than 20 lots are listed for sale at 2010 prices or lower with no (or minimal) buyer interest, and many more owners wish to sell but the glut of lots on the market cause them not to list their properties for sale.

37. The KGE Community is an association currently consists of a total of 378 units, of which nearly 100 are condominium units, as confirmed by the deeded and recorded instruments with Maui County.

38. Homeowners associations that include condominium units are governed by and subject to the Condominium Property Act, which Act serves important public policy goals declared by the Hawaii legislature of ensuring the stability, financial integrity and soundness of homeowner associations that include condominium units to protect owners from financial mismanagement and the dangers of under-funding and costly assessments, which further benefits the public at large through maintaining the properties and a stable housing community.

DEFENDANTS' FAILURE TO COMPLY WITH THE CONDOMINIUM PROPERTY ACT, INCLUING THE IMPORTANT REQUIREMENT OF MAINTAINING AN ADEQAUTE RESERVE FUND

39. Among the important requirements contained in the Condominium Property Act is that the association maintain certain minimum reserve funding requirements. Associations are required to "fund a minimum of fifty percent of the estimated replacement reserves or fund one hundred per cent of the estimated replacement reserves when using a cash flow plan."

40. Defendants KGECA, DMI and each of the individual Defendants have openly rejected the reserve funding requirements, expressly stating that they do not intend to comply with them and, after recently significantly reducing reserve funding for the KGE Community in order to fund risky litigation against owners, continue to maintain reserve funds far below that required by the Act, placing the Association, Plaintiffs, and all owners at risk.

41. Defendant KGECA, the KGE Board and DMI have disavowed their legal obligation to maintain adequate reserves for the benefit of Plaintiffs and all owners, including but not limited to:

a. During recent Board meetings dating back to at least April 2016, Defendant KGECA by and through its Board members and its fiscal agent, Defendant DMI, openly asserted that they do not believe the KGECA is required to maintain *any reserve fund at all.*

b. KGECA Board President Defendant Aber and the principal executive of Defendant DMI, Ron Kawahara, each publicly declared that owners in the KGE Community should consider themselves lucky that the KGECA Board (Defendants) has reserved *any funds at all because (incorrectly) there is no legal requirement for it to maintain reserve funds*, albeit far less than the amount required by Hawaii law.

42. Defendants have violated the Condominium Property Act and engaged in dangerous financial management by cutting the amount of owners' maintenance dues that are being set aside and contributed to the reserve fund.

43. During 2015, Defendant KGECA engaged a consultant for the purpose of preparing a reserve study to ensure adequate funds were being set aside to cover future capital improvements, maintenance and foreseeable expenses.

44. During early 2016, Defendants KGECA and DMI publicly stated that the minimum reserve funding required by the Condominium Property Act do not apply to KGE and that, in fact, reserve funds were below the amount required by the Act.

45. Later in 2016, Defendant KGECA, without any public discussion at a Board meeting or otherwise informing owners, re-engaged the same consultant for the purpose of preparing a new reserve study. The 2016 reserve study inexplicably reduced the reserve savings called for by the 2015 reserve study by more than

$800,000.

46. Faced with repeated owner requests for information regarding the adequacy of reserve funding, Defendants have been unable to provide any reasonable explanation for the dramatic reduction in reserve savings intended to cover capital improvements, instead attempting to limit owner access to information.

47. Based on information and belief, an owner inquiry to the consultant involved in the dramatically reduced reserve study in 2016 revealed that Defendants actively participated in determining the capital expenditures that would be covered by reserve funding (deciding that there would be no reserve funding at all for certain infrastructure repairs and replacement), directed the consultant to find ways to reduce future capital expenditures and without the requisite expertise, deciding the useful life of certain assets (including dangerously extending the useful life of expensive roadways).

48. Based on information and belief, Plaintiffs allege that Defendants sought to reduce the overall future reserve funding needed in order to reduce the amount of maintenance dues required to be diverted to the Reserve Fund under the 2015 Reserve Study, which was about to increase from about $80,000/year to $140,000/year (thereby reducing available funds for other expenditures Defendants desired, including funding litigation against owners).

49. In January 2017, without any advance discussion at an open KGECA Board meeting and without any justification, the KGECA raised owner's dues, even though the new 2016 Reserve Study dramatically reduced annual Reserve Funding, thus freeing up even more maintenance dues to be spent on other matter directed by Defendants.

50. Plaintiffs are informed and believe and based thereon allege that the Defendant KGE Board members reduced reserve savings and raised dues in order to shift revenue away from maintaining the community and toward litigation expenses related to several lawsuits filed against owners and to "makeup" for past fines that had been recognized as income by the Board but that have since been written off or become uncollectible.

51. Defendants' conduct is exactly the type of financial mismanagement that creates a great risk of future financial ruin to the association, and for which the Hawaii Legislature enacted the Act to guard against, especially given that in 20 years when the impact of Defendants' mismanagement will be felt, none of the Defendants will be around to be held accountable.

52. It was revealed during the summer of 2016 that Defendant KGECA had not timely filed its tax returns for 2013, 2014 or 2015, and was secretly working in 2016 to file them late without informing owners of this important matter, and in the hopes of redressing it before owners learned of their

mismanagement.

53. The financial reports provided by KGECA to owners are incomplete, unaudited, unsigned, and unverified.

54. In response to owner request for financial information to which owners are entitled under both the CC&Rs and Hawaii law, and a request to speak with Defendant KGECA's recently hired CPA to file the three years' of missed tax returns and to perform an audit, Defendant KGECA adopted an unlawful Owner Document Request Policy that violates both the CC&Rs and Hawaii law because it creates numerous obstacles, onerous burdens, and delay in owners seeking basic financial information, and further has a chilling effect on owners who wish to oversee Defendant KGEAC's fiscal management, as well as Defendant KGECA's financial agents from providing frank and open information.

PROPERTIES PURCHASED BY PLAINTIFFS AND DEFENDANTS' UNLAWFUL RECORDING OF THE 2014 SCOTT-HALPIN AMENDMENT TO THE CC&RS WITH ONLY 22% APPROVAL BY OWNERS

55. Each of the Plaintiffs is the current or former owner of one or more parcels of real property located in the KGE Community and governed by KGECA.

56. Plaintiff TODD NICOL has owned and developed several different properties in KGE and has owned various properties in KGE for more than 15 years.

57. Plaintiff NICOL most recently were the owners of a custom home that

they built on two lots (lots 10/11) fronting the golf course located in KGE commonly known as 34 Kahuakai Place. Plaintiff Nichol sold the home in 2016, after being harassed and annoyed by the unwarranted and wrongful invasions of privacy, trespassing, and harassment by the Defendant KGE Board members. Plaintiff NICOL sold the property at a substantially lower price as a result of the Amendment that deprived him of the important property right to rent their home for period of 30+ days, and further lost rental income during their time of ownership. Based on information and belief, Plaintiff Nicol further alleges that the value of the property was further reduced by the harassing and other unlawful activity of Defendants as alleged herein and that such conduct has become so widely known that realtors do not recommend KGE has a positive ownership experience and buyers are discouraged from purchasing within KGE.

58. Plaintiff JACK RILEY purchased two lots in the Lanikeha subdivision of KGE (Lot 49, Phase 1 and Lot 57, Phase 2), and was one of the buyers in Phase 1 that the Lanikeha developer encouraged to purchase in Phase 2. Plaintiff RILEY is a developer who originally purchased two lots in Lanikeha during their initial release, based in part on the entitled right to receive short term rental income when not using the home. Plaintiff RILEY sold Lot 48 at a considerable lower price than he could have sold it as a result of the loss of his rental rights. Plaintiff Riley would not have purchased either lot had he known

Defendants would strip him of his rental rights.

59. Plaintiffs DAVID and IAN MURRAY purchased two lots in Lanikeha (Lot 57, Phase 1 and lot 32, Phase 2). The Murrays completed construction of a home on Lot 57, now known as 990 Anapuni Place. The Murrays purchased their lots in Lanikeha during their initial release and based in part on the entitled right to receive short term rental income when their family was not using the home and as promoted by the developer.

60. Plaintiff THINH TRAN is the owner of two units located in the Lanikeha subdivision, one a first vacation home located at 577 Anapuni Loop, and a second vacation home located at 1030 Anapuni Place.

61. Plaintiff THINH TRAN purchased his units in the Lanikeha subdivision based on the representations and rights conveyed in the KGE CC&Rs that allowed owners to lease their units on a short term 30+ day basis and the Lanikeha CC&Rs that have at all times allowed short term rentals of any duration; and further based on the Lanikeha Developer's marketing of lots in Phase 2 to owners who has purchased previously in Phase 1, identifying the right to use the home as a vacation rental property for periods of 30+ days as a reason for purchase as an investment, with all such marketing and reliance thereon by buyers known to Defendants.

62. Plaintiff THINH TRAN would not have bought and built a second

home in Lanikeha if he had known that Defendants were going to unilaterally and without owner consent or approval, take away short term rental rights.

63. Plaintiff THINH TRAN owns a property adjacent to Defendant SCOTT who is believed to have cited "The Tran Boys" (adult children) as the reason for the "owner occupancy only – children excluded" requirement in the 2014 Amendment.

64. Based on information and belief, Plaintiffs allege that Defendant Scott desired that property use be restricted to only owners on title in order to prevent Plaintiff THINH TRAN's adult children from enjoying his vacation home, and that such a restriction was later recorded against the properties by Defendants.

65. Plaintiffs JOHN NGUYEN and THANH TRAN are the co-owners of one unit located in the Lanikeha subdivision (lot 51, phase 2).

66. Each of the individual Plaintiffs purchased units and/or constructed vacation homes in reliance on the KGE CC&Rs that allow short 30+ day rentals, and none of the Plaintiffs purchased with the intent to reside at the property on a full-time basis and as their primary residence, which is exactly the developed and intended design for the KGECA.

67. Plaintiffs are informed and believe that for more than 20 years owners in KGE have enjoyed the benefits and derived income from the ability to lease their homes on a short term 30+ day basis as allowed by the KGE CC&Rs.

68. Allowing short term rentals in the resort community of Ka'anapali is consistent with the Maui County General Plan and zoning requirements.

69. The KGE Community is zoned R-3.

70. The Lanikeha sub-association is zoned R-3.

71. In Maui County R-3 zoning designation expressly includes and allows "short term rental homes."

72. Maui County has always allowed and intended for short term rentals to be located in KGECA. The character of the properties at issue are not the type of residences that Maui County was concerned about being converted from available housing for local residents as these properties predominantly cost in excess of $2 million to purchase the land and construct a home, with lot sizes ranging up to 80,000 square feet (2 acres) and many homes larger than 5,000 square feet and worth $5 million to $7 million.

73. During the 2008 legislative session, the County of Maui passed Bill No. 115 enacting Ordinance No. 3611 which amended Title 19 of the Maui County Code and established a process which would allow KGECA owners to apply for a bed and breakfast permit (the "B&B Ordinance"). Under the B&B Ordinance property owners are required to apply for and obtain a permit in order to lease their home as a bed and breakfast.

74. During the 2012 legislative session the County of Maui passed Bill

No. 35 enacting Ordinance No. 3941 which amended Title 19 of the Maui County Code and established a permitting process for short term rentals (less than 180 days) (the "STRH Ordinance").

75. Under the STRH Ordinance and the B&B Ordinance, property owners in the KGE Community are eligible to receive a permit which would allow them to rent or lease their homes, so long as the lease term was 30+ days per KGE CC&Rs. Based on information and belief, Plaintiffs allege that the purpose behind licensing homes such as those in KGE was not to restrict owner use of such properties as rentals, but to ensure that all Transient Accommodation Taxes ("TAT") were paid and affordable housing for local residents was not converted to expensive nightly rentals.

76. The State of Hawaii has recognized a growing need and demand for alternative accommodations, finding that some families prefer to rent a large private luxury home and may not visit our islands if the only option is hotels, and that alternative accommodations comprise $1.7 billion annually.

77. In January 2013, the developer of KGE turned control over the AOAO to the owners.

78. Plaintiffs are informed and believe and based thereon allege that the owners who took control over KGECA in 2013 and who remain in control today were not properly elected and are now running the Association like a "good ole

boys club" abusing their authority and furthering their self-interests by positioning themselves in all positions of community management.

79. The individually named Defendants are the Board members of KGECA who took control from the KGECA developer in 2013.

80. At the time each of the Plaintiffs purchased their properties in KGE, the CC&Rs expressly allowed leasing of Units for a minimum term of thirty (30) days.

81. None of the Defendants disclosed any intention to change the use and/or rental of the real properties in KGECA at the time any of the Plaintiffs purchased their KGECA properties. Based on information and belief, at the time Defendants pressured the developer to relinquish its control voluntarily and prior to mandatory relinquishment under the CC&Rs, Defendants did not disclose to the developer that they had a plan to fraudulently amend the CC&Rs to ban rentals of 30+ days even though the CC&Rs required 75% of owners to approve any such amendment to the CC&Rs.

82. Plaintiffs are informed and believe, and based thereon allege, that prior to developer turnover in 2013 a group of owners including Defendants HALPIN and SCOTT approached the KGECA developer and requested that the developer adopt an Amendment prohibiting all short term rentals in KGECA.

83. Plaintiffs are informed and believe, and based thereon allege, that the

KGE developer rejected the proposed Amendment because it was inconsistent with intended development purpose for KGE, contrary to the interests of the vast majority of owners, would effect a dramatic change in the CC&Rs and result in significant changes to the character of the community which would require 100% owner consent since it otherwise would constitute a taking of real property rights vested in each owner by the CC&Rs.

84. Plaintiffs are informed and believe, and based thereon allege, that SCOTT and other Board members were not properly elected in 2013, and that none of the subsequent elections have been conducted in accordance with the CC&Rs and Hawaii law.

85. Plaintiffs are informed and believe, and based thereon allege, that SCOTT, HALPIN, ABER, BOYLE, RAGSDALE, HENRY conspired with the other Defendants to gain control over the KGECA for personal gain and the primary purpose of restricting short term rentals in KGECA, against the developer's design and intent, without proper notice or owner consent, and in violation of the laws of the United States and the State of Hawaii, and in furtherance of an unlawful enterprise and which constitutes racketeering.

86. Plaintiffs are informed and believe, and based thereon allege, that beginning in 2013 SCOTT, HALPIN and other Defendants failed to have any proper discussion during board meetings about the proposed Amendment, failed to

properly disclose their intentions in the meeting minutes, provided materially false statements to owners, failed to survey owners, failed to conduct an owners' forum, and simply railroaded a so-called "TVR Amendment" past owners.

87. Plaintiffs are informed and believe, and based thereon allege, that SCOTT and HALPIN are the principal authors of the 2014 Amendment and architects of an aggressive Anti-TVR agenda that was used to threaten, harass, and intimidate Plaintiffs and other owners.

88. Plaintiffs are informed and believe, and based thereon allege, that neither the KGECA or any of the Board member Defendants conducted any research to determine whether prohibiting short term rentals in a vacation resort community would harm property values, was desired by owners, and/or whether alternatives would ameliorate any concerns Defendants had, including but not limited to adopting reasonable house rules, allowing each neighborhood within the KGE community decide its own regulations on 30+ day rentals, and/or requiring all rentals to be screened and managed by a professional real estate firm. Plaintiffs are informed and further believe, that Defendant HALPIN has run a short-term rental business in other communities and is well aware of the manner in which those communities allow short term renting consistent with the interests of all owners, and that Defendant HALPIN in pursuing the 2014 Amendment was not acting in owners' best interest, but rather protecting his business interests by

eliminating rental alternatives to the properties Defendant HALPIN manages.

89. The National Association of Realtors has issued a Field Guide on Short Term Rental Restrictions and concluded that restricting short term rentals in a a community:

- Diminishes value of investment property.
- Reduces the pool of buyers able to purchase in high-demand vacation areas.
- Infringes upon property rights.

THE IMPROPER, FRAUDULENT, AND UNLAWFUL ACTS OF DEFENDANTS IN PASSING THE 2014 AMENDMENT

90. On February 24, 2014, the KGECA Board mailed a letter to KGE owners regarding a proposed Amendment to the CC&Rs ("Proxy Letter"). In the Proxy Letter the Board advised KGE owners that during a February 11, 2014 Board Meeting, the KGECA Board had "a discussion" about revising the CC&Rs to "reflect" the current Maui County Ordinance "minimum rental period of 180 days." The letter also stated that:

> *"In order for an amendment to the CC&Rs for KGECA to become effective,* ***approval of 75% of all of the KGECA Members must be registered through a Proxy Voting Ballot directing the member's Parcel Voting Member how to cast the member's vote****, and upon approval, filing with the State of Hawaii Bureau of Conveyances." (emphasis added.)*

91. The February 24, 2014, Proxy Letter, did not advise owners of any consequence of their decision not to direct their vote or to otherwise have any

understanding that not voting would actually be different than a "No" vote since the Proxy Letter stated the contrary – that the amendment would become effective only if affirmatively approved by 75% of owners directing how their votes should be cast.

92. The February 24, 2014 Proxy Letter contained a "Draft Amendment to the CC&R's Article XII "USE RESTRICTIONS", SECTION 27, "Leasing of Units" and a "2014 Voting Proxy." The draft Amendment provided, in part:

> *Units may not be used for – Transient vacation rentals. "Transient Vacation Rental" means the occupancy of – a dwelling or lodging unit by any person or entity that is not the recorded owner of a Unit for a period of less than one hundred eighty (180) days.*

93. The Proxy Letter was improper and entirely defective in that it was mailed to Plaintiffs and all KGE property owners without compliance with normal and required notice mailing requirements.

94. The Proxy Letter was defective because it failed to include a return address and failed to set forth the date and time of the meeting where the voting would take place, as expressly required by the CCRs and Hawaii law.

95. The Amendment is a facially invalid use restriction that violates both Federal and State law in that it prohibits all family members, except the owners of record, from occupying a home in the Ka'anapali Golf Estates for less than six months. As a result, no children or extended family members are allowed to stay in

the home over the holidays or any other short-term period, and it further discriminates against relationships such as unmarried couples, both heterosexual and homosexual, and intrudes unconstitutionally on the right of association by interfering in a countless list of personal living arrangements.

96. Plaintiffs are informed and believe, and based thereon allege, that only 88 out of 387 (or 22.7%) of KGE owners returned proxy votes indicating their approval of the Amendment, and that many of the 88 were misled and confused into thinking their yes vote was required to comply with Maui County Ordinance, which is not the case.

97. Therefore, because under Hawaii law (and the CC&Rs) the Amendment was not properly noticed and was not properly adopted by 75% of the KGE owners, it should never have been recorded in the chain of title to Plaintiff's properties.

98. But, having failed to achieve the required 75% owner approval, the KGECA Board members devised a plan to fraudulently adopt the Amendment and thereafter met at a secret undisclosed meeting, providing no notice to owners, and not in conformity with the CC&Rs, Roberts Rules of Order (incorporated into the CC&Rs), or Hawaii law and allowed the seven (7) owner Board member Defendants to cast all of the remaining 249 votes that had not been returned by absent owners in favor of their Amendment, and without first receiving a proxy or

power of attorney from any owner, all which was in violation of Hawaii law.

99. On August 18, 2014, the Amendment was recorded in the chain of title to Plaintiffs' properties and all properties in the Ka`anapali Golf Estates, and the extended delay in recording the Amendment was the result of hesitancy and knowledge on Defendants' part that they were unlawfully recording an Amendment to the CC&Rs.

100. The 2014 Amendment was signed by Defendants SCOTT, ABER, and BOYLE and fraudulently purports to have been "approved by eighty-nine percent (89%) of the Voting Members of the Association on April 1, 2014".

101. It was an intentional, malicious and fraudulent act for Defendants to record the 2014 Amendment because they knew that a super-majority of KGE owners purchased their KGE units to be used as a second home and investment property, and that rental rights were important to their values, without doing any outreach to owners to survey their interests and desires, based on the fraudulent and misleading language chosen for the Proxy Letter, and scheduling a second meeting undisclosed to owners at which uncast votes would be voted in favor of the Amendment and contrary to the Proxy Letter previously sent out that stated the Amendment would be approved only if 75% of owners returned a proxy directing a vote in favor of it.

102. On August 27, 2014, the General Manager for KGE, at the direction

of Defendant SCOTT, sent owners an email correspondence advising the following:

> *This office has received complaints that several homes are being leased for short-term rentals. If this type of occupancy continues, the Association will require documentation of the occupants' relationships to the owners.* ***"The burden of proof shall be on the Owner of record to establish to the satisfaction of the Board of Directors that the subject Unit is not being used as a Transient Vacation Rental."***
>
> *Also the amendment states "**Any Advertising, in any form of media, or any communication by a Unit owner, property management individual or company, Realtor or Real Estate Company, or lessee to any person where the Unit owner, property management individual or company, Realtor or Real Estate Company, or lessee offers a Unit as a Transient Vacation Rental shall constitute prima facie evidence of the operation of a short-term rental home on the property and as such shall constitute an enforceable violation of this Section.**"*
>
> *In accordance with the Ka`anapali Golf Estates Community Association, Inc.'s By-Laws, Article III, Section 23, the Board shall have the power to impose reasonable fines, up to and including a lien upon the property of the violating Owner. The Association's fining policy is as follows: $10,000.00 per occurrence." (Emphasis in original)*

103. Plaintiffs were each either unable to understand the Proxy Letter and the voting process, or believed that abstaining from voting would be equivalent to a "no" vote. Many owners also did not participate simply because they believed the Amendment was unlikely to be adopted due to the 75% owner approval requirement and that returning a proxy stating "no" is no different than not sending

in a proxy at all when the Proxy Letter made clear that affirmative approval by 75% was required for passage of the amendment.

104. Plaintiffs also either did not have a chance to read or understand the August 27, 2014 email because the email went directly to their junk mail folder, as the email was addressed in bulk to every KGE homeowner and not to them individually.

105. Plaintiffs were told by KGECA that the Amendment was necessary in order to "mirror" recent changes to the Maui County Code.

106. Plaintiffs were told that the 2014 Amendment did in fact 'mirror" the Maui County Code, but that was a false and fraudulent statement by Defendants to lull owners into a false sense of understanding that the Amendment was innocuous and, accordingly, even owners who signed the proxy did not appreciate the true significance and, as a result of Defendants' fraudulent conduct, were duped into voting in favor of something they did not wish to approve.

107. The Amendment prohibits what the Maui Code set forth above permits.

DEFENDANTS IMMEDIATELY BEGAN A CAMPAIGN OF FINING OWNERS' $10,000 PER OCCURRENCE AND EVEN WHEN OWNERS DID NOT RENT THEIR HOMES

108. Within thirty (30) days of recording the Amendment, KGECA began sending out "Violation Notices" to owners imposing $10,000.00 fines against

owners whom the Board believed were in violation of the new Amendment, including fining owners merely for "Advertising of Unit for Short Term Rental" ("Notice of Violation Letter"). The letters further stated:

> *This amount constitutes a lien upon your property that may be foreclosed by the Association in the manner provided in the governing documents for failure to pay Assessments. Also, because you had not corrected the violations, your voting and common area use privileges are automatically suspended.*
>
> *You have the right to challenge this Notice by presenting a written request within ten (10) days of receipt of this Notice to the Board of Directors for a hearing. If you do not make such a request, the fine listed above shall take immediate effect.*

109. At all times Plaintiffs who received fine notices disputed the allegations in the Notice of Violation Letters, appearing as instructed before the KGECA Covenants Committee, and informed the Committee that they had not been informed of the Amendment prior to the Notice of Violation Letter, that they Amendment was adopted improperly, that they had not advertised, had not rented, or that the Amendment and the fines were otherwise invalid.

110. Many owners have received multiple Notice of Violation Letters and have spent years disputing and attempting to disprove the Board's allegations.

111. The KGE Board imposes unreasonable and punitive fines:

a. Owners report construction fines of $33,000, the majority of which was based on claims that someone had slept in the newly constructed home, for one night, prior to receiving final approval by KGE.

b. One owner was fined $77,000 because he completed construction of his large home 77 days late. His neighbors and President ABER wrote letters to KGE on the owner's behalf, attesting that no inconvenience was made by the late completion and the custom home elevated the quality of the neighborhood.

c. Owners have also received fines ranging from $10,000 to $100,000 for allegedly violating the 2014 Amendment because the KGE manager located an advertisement for the home on the internet. Free speech is not so free in KGE.

d. Other owners have repeatedly received multiple fines of $500 - $1000 with no ability to challenge their imposition.

112. Plaintiffs and other owners feel that what is happening is extortion, plain and simple. Owners are denied property without due process, often under duress imposed by KGECA by and through SCOTT and ABER with the approval of all of the Defendant KGE Board members.

113. Plaintiffs are informed and believe and based thereon allege that the actions by the Defendant as alleged herein have harmed the reputation and standing of our community, harming sales activity, depressing values.

DEFENDANTS' FAILURE TO ADHERE TO THE ADR PROCEDURES IN THE CC&Rs AND WAIVER OF RIGHTS

114. Under the KGE CC&Rs, disputes between owners and the KGECA

are supposed to be resolved or submitted to mediation within 60 days.

115. Plaintiffs are informed and believe and based thereon allege that from 2013 to the present the KGECA Board has refused to mediate claims with owners, insisting that owners must commence litigation before their claims will be considered.

116. Plaintiffs are informed and believe and based thereon allege that any owner who was not satisfied with the results of the Covenants Committee hearing was told that they could appeal that decision to the KGE Board per the Bylaws, which in effect meant that their appeal would be heard by the same Board Members who initially ruled against them when before the Covenants Committee.

117. KGECA Covenant Committee is comprised of five of the seven Board members.

118. The KGECA Board routinely and as a matter of course denies owners appeals. The KGECA then refuses to submit their claims to mediation.

119. The KGE Bylaws specifically provide that the KGE CC&Rs prevail over any inconsistent provisions or language contained in the KGE Bylaws.

120. While the KGE Bylaws set forth an appeal process, the CC&Rs require that disputes over fines be resolved or submitted to mediation within 60 days.

121. Due to KGECA's routine rejection of owner's requests for mediation

and insistence that owners must commence litigation before the owner's pleas will be considered, KGECA has waived and forfeited its right to demand or compel mediation or arbitration under the ADR provisions contained in the CC&Rs.

122. Plaintiffs are informed and believe and based thereon allege that KGECA and the Defendant Board members use the Amendment and $10,000 like a sledgehammer, threatening owners and even recording liens until targeted owners finally put their homes up for sale and leave the community.

123. Plaintiffs are informed and believe and based thereon allege that many owners have engaged in protracted disputes with the KGECA Board and have received "Notice of Delinquent Assessments" for years yet when they sell their properties, the KGECA Board sometimes extorts payment before escrow can close or, alternatively, forgives and waives the fines.

124. Plaintiffs are informed and believe and based thereon allege that KGECA has continued to impose fines, late fees, interest, and attorneys' fees for disputed violations of the CC&Rs.

125. According to the KGECA Board, they treat disputed fines the same as assessments (although different under both CC&Rs and the law) and constitute a lien upon Plaintiff's property that KGECA may foreclose upon pursuant to the CC&Rs.

126. Plaintiffs are informed and believe and based thereon allege that

despite not having had any of their claims properly adjudicated, the KGECA has begun foreclosure proceedings to collect disputed $10,000 "TVR" fines.

127. At all relevant times, KGECA has refused and been unwilling to participate in mediation with any of the Plaintiffs. KGECA has further refused to comply with the provisions of the CCRs for resolving other disputes with owners.

128. The $10,000.00 fines charged against Plaintiffs TODD NICOL and DAVID and IAN MURRAY, as well as many other owners, for alleged violations of the CC&Rs is not an "exempt claim" as defined by Article XVII, Section 2 of the CC&Rs.

129. KGECA violated the CC&Rs when it failed to abide by the procedures set forth in Article XVII, Section 3.

130. Plaintiffs are informed and believe and based thereon allege that the KGECA and the individual Board member Defendants personally police the KGE Community, following rental cars, questioning drivers, trespassing onto owners private property to demand identification and question occupants about leases.

131. Plaintiffs are informed and believe and based thereon allege that the only complaints regarding short term rentals that have been reported to Maui County during 2012 – 2016 were made by the KGECA management and that such complaints were made at the direction of Defendant SCOTT and others.

132. Plaintiffs are informed and believe and based thereon allege that

Defendants RAGSDALE and SCOTT made the decision (without board approval) to hire a "Secret TVR Shopper" to entrap owners into offering their homes for rent on a short term basis. Once an offer is made, a $10,000 fine is imposed. Such conduct was wholly inexcusable and in breach of the Defendant's fiduciary duty to act in the best interest of owners, such that entrapping them into $10,000 fines breached such duty.

133. In the case of Plaintiffs MURRAY, they were not advertising their home for rental nor actively seeking a renter, when KGEC directed its 'secret shopper" to inquire about the Murray's openness to rent their home. When Plaintiffs MURRAY responded open to the idea, but not with a commitment, they were fined $20,000 and even though their home was never rented.

134. Plaintiffs are informed and believe and based thereon allege that KGECA uses a private security company to investigate the occupants of homes in the KGE Community, with instructions to enter upon the owners property, without notice or permission, to demand identification and copies of leases (if any), and to take pictures of the occupants sometimes through windows and in backyards in violation of their rights to due process, right of privacy, and right of quiet enjoyment – interfering with owners rights to use their homes and all the while imposing excess and onerous fines of $10,000 per alleged violation.

DEFENDANTS' UNLAWFUL REVERSE PAYMENT RESOLUTION

135. The KGECA has adopted a so-called reverse Payment Resolution that violates Hawaii law and denies owners of property without due process. In short, when owners send their quarterly dues, the KGECA will first use those funds to pay its attorneys fees, fines, and any other amount it has unilaterally imposed on the owners account, and the funds are then applied last to pay the quarterly dues for which the payment was intended, with the result to be late fees and interest accumulating each month unless and until the owner pays KGEC's attorneys' fees, fines and other amounts charged against the owner's account.

136. Defendants further use this process to render "delinquent" the accounts of owners that disagree with them so as to assert that they are not in "good standing" under the CC&Rs and thus not entitled to vote on association elections or other matters.

137. Plaintiffs are informed and believe and based thereon allege that KGECA recently attempted to seize over $100,000 from an owners account to pay long disputed fines, without a judgment or court order of any kind, and that said owner's funds were not converted only because of the diligence of the owner's bank.

FIRST CLAIM FOR RELIEF
(Declaratory and Injunctive Relief)

138. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, all allegations contained in the preceding paragraphs, and each and every paragraph following this Claim For Relief.

139. Plaintiffs are informed and believe that the KGE Community includes approximately 100 condominium units.

140. Condominium units in Hawaii are subject to and protected by the Condominium Property Act.

141. Plaintiffs are informed and believe that the law requires KGECA to operate in a fiscally sound and responsible manner that protects owner interests and in accordance with the Condominium Property Act.

142. Defendants insist they are not required to maintain and reserve accounts for the KGE Community.

143. Defendants recently eliminated approximately $800,000 from the KGE Community reserve funds.

144. A reserve study commissioned by Defendant KGECA in 2015 concluded that **the KGE Community has $3,775,875 in future repair projects**, costs of capital improvements, and maintenance for the calendar years 2017 through 2044; in the following year 2016 Defendant KGECA commissioned a new reserve study that slashed this amount by $1,531,039 (or 41%) for the same time

period.

145. The Condominium Property Act was put in place to protect homeowners from rogue boards that decide not to maintain adequate reserve funds to protect owner interests.

146. An actual dispute and controversy exists between Plaintiffs and Defendants in this regard.

147. Absent a Court order the Plaintiffs could face a financial disaster resulting in large unscheduled assessments to fund necessary maintenance and repairs on our community.

148. Plaintiffs request that this Court require KGECA to abandon its reckless accounting practices and declare and order that it must comply with the requirements of the Condominium Property Act.

149. Plaintiffs hereby seek a declaration that the Condominium Property Act applies to KGECA and injunctive relief requiring Defendants to adhere to all obligations within said statutory scheme.

SECOND CLAIM FOR RELIEF
(Declaratory and Injunctive Relief)

150. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, all allegations contained in the preceding paragraphs, and each and every paragraph following this Claim For Relief.

151. The KGE Community was marketed and sold to Plaintiffs and other

owners as an ideal location to build or own a vacation home. At the time each of the Plaintiffs purchased their KGE properties, and at all times prior to 2014, owners in KGE were allowed to offer their homes for lease on a short 30+ day minimum term pursuant to the CC&Rs that were approved and recorded with the County of Maui in 1992.

152. An actual dispute and controversy exists between Plaintiffs and Defendants concerning the 2014 Amendment which issues need judicial resolution so that the parties may take further actions in compliance with their rights and duties.

153. Plaintiffs seek a judicial determination rendering the 2014 Amendment invalid and void due to both substantive and procedural defects.

154. The plain reading of the Amendment provides that only the "owners of record" may occupy a house in the KGE Community for less than 180 days (six months).

155. The 2014 Amendment literally prohibits *everyone* except the record title owner from occupying the homes and condos in KGE Community, including all family members and necessarily all children who are not on title, from vacationing or associating together in the Plaintiff's homes, unless they stay for six months.

156. The United States Supreme Court has long held that occupancy

restrictions that exclude extended family violate the Due Process Clause of the Fourteenth Amendment. *Moore v. City of East Cleveland, Ohio,* 431 U.S. 494, 501, 97 S.Ct. 1932, 1936, 52 L.Ed.2^{d} 531, ___ (1977).

157. Further, the Fair Housing Act Amendment, 42 U.S.C.A. § 3604 (a-c), *Discrimination in the sale or rental of housing and other prohibited practices,* protects *families stating, in part:*

> *(b) To d*iscriminate against any person in the terms, cond^{it}ions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, *familial status*, or national origin.
>
> Further, 42 U.S.C.A. § 3617 states:
>
> It shall be *unlawful* to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605 or 3606 of this title.

E.g., Jeffrey Petty, et al, v. Portofino Council of Coowners, Inc., 702 F.Supp.2d 721, 728 (S.D. Tex. 2010).

158. Similarly, § 515-6 of the Hawaii Revised Statutes (hereinafter "HRS") declares any written instrument with restrictive covenants against occupancy to individuals due to familial status are void, therefore, cannot be recorded against property.

159. Pursuant to HRS § 632-1, Plaintiffs desire a court declaration and related statutes and the common law to resolve an actual controversy between the

parties in order to terminate the uncertainty and end the controversy.

160. Defendants have used the 2014 Amendment to require owners to identity and register the names and contact information for any and all occupants of their homes to ensure they are not renting the home.

161. Defendant KGECA and the Board are often overzealous and misidentify family and friends as bad short term renters who must be run out of the community at all costs.

162. Plaintiffs are entitled to a declaration that the 2014 Amendment is substantively unlawful, void, therefore, of no force and effect.

163. Plaintiffs also seek a declaration that the process used to adopt the Amendment was defective and therefore the 2014 Amendment is invalid.

164. The procedural defects include:

a. The Proxy Letter failed to give the required notice of the date, time, and place where the votes would be counted.

b. The Proxy Letter failed to include a return address.

c. Plaintiffs were misled to believe that the Amendment would simply “mirror” the requirements of the Maui County Code.

d. Plaintiffs were mislead when they received a “Draft” Amendment, and never provided the actual Amendment that would be voted on and eventually recorded against their property title.

e. The 2014 Amendment was adopted and recorded despite failing to receive the required 75% owner support, making a fundamental change to the entitlements and use rights owners purchased.

f. The 2014 Amendment only received 22.7% actual owner support.

g. The KGECA allowed the Defendant KGE Board to cast 249 uncast votes, without proxies from owners, purportedly "at their discretion", all of which were voted in favor of the Amendment, without owner knowledge or consent.

165. In addition to invalidating the 2014 Amendment, Plaintiffs seek a declaration that the Voting Member provision contained in the CC&Rs is invalid and unlawful, or alternatively, can only be used, if at all, if approved by owners and to establish a quorum so that the Board may conduct ordinary business but cannot be used to amend the CC&Rs or for voting in any elections.

166. The Defendant KGE Board believe that a representative Voting Member is entitled to cast all of the votes for the neighborhood, at his or her discretion, without seeking the owners input, approval or consent, and without giving notice to the owner that failing to vote will result in a default proxy.

167. There are three types of proxies: (1) directed proxies where an owner tells a third party how to vote the owner's vote; (2) discretionary proxies where the owner grants authority to a third party allowing him or her to cast the vote, usually

in proportion to the votes are received, or (3) default proxies (i.e., if owners do not affirmatively proxy their votes, they revert to the Board to vote in their discretion) – an oxymoron fraught with abuse that is not used by any HOA anywhere to the best of counsel's knowledge, and a process that has been outlawed by several states.

168. The KGE CC&Rs were drafted in 1992 by a law firm in Atlanta Georgia and purport to allow each neighborhood the option to elect a representative Voting Member who is vested with the "discretion" to vote *all of the votes* in the neighborhood at his or her discretion, without a proxy, without owner consent or approval, and even over the objection of the owner! Default proxies violate the "one unit one vote" rule and are not allowed under Hawaii law.

169. By misusing the Voting Member provisions of the KGE CC&Rs Defendants believe that as few as two of them who control more than 50% of the votes (Defendant Henry is Voting Member who controls 132 votes, Defendant Halpin is Voting Member who controls 73 votes, and that is 54% of all community votes) can make any change requiring owner approval of 50% (and regardless of what owners desire and even contrary to how owners direct them to vote their votes); and that four of them (Defendants Ragsdale and Aber control 53 and 33 votes, respectively, as Voting Members, which empowers the four of them with

296 of 387 votes, or 76% of all votes) at any time, to amend the CC&Rs and use the voting member structure to insulate themselves from challenge.

a. Voting Members ABER, BOYLE, RAGSDALE, HENRY, and HALPIN routinely misuse the voting member process and simply reelect themselves, casting all of the votes for their neighborhood.

b. SCOTT voted nearly 100 other owners' votes for the 2014 Amendment without a proxy, without seeking any input from, or obtaining any direction from the owners.

c. HALPIN voted 45 other owners' votes for the 2014 Amendment without a proxy, without seeking any input from, or obtaining any direction from the owners.

d. ABER voted 14 other owners' votes for the 2014 Amendment without a proxy, without seeking any input from, or obtaining any direction from the owners.

e. RAGSDALE voted 32 other owners' votes for the 2014 Amendment without a proxy, without seeking any input from, or obtaining any direction from the owners

f. BOYLE voted 15 other owners' votes for the 2014 Amendment without a proxy, without seeking any input from, or obtaining any direction from the owners.

170. The 2014 Amendment would not have been adopted based on the proxies returned, without SCOTT, HALPIN, ABER, RAGSDALE, and BOYLE voting over 200 times (in a community totaling only 378), usurping the rights of non-responsive absentee owners.

171. Plaintiffs request a declaration that the 2014 Amendment is procedurally and/or substantively defective and therefore void and of no force and effect.

172. Finally, Plaintiffs seek a permanent injunction preventing and enjoining Defendants from enforcing any of the provisions contained in the 2014 Amendment rendering it null and void.

THIRD CLAIM FOR RELIEF
(Defendants KGECA Board Members Breach of Fiduciary Duty)

173. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, all allegations contained in the preceding paragraphs, and each and every paragraph following this Claim For Relief.

174. As KGECA Board members, each of the individual defendants owed fiduciary duties to the Association and to Plaintiffs.

175. Each Defendant named individually, had a duty to exercise due care and a duty of loyalty as officers and directors of the Association.

176. Plaintiffs are informed and believe and based thereon allege that each of the Defendant KGECA Board Members breached the fiduciary duties owed to Plaintiffs by, *inter alia*, the following:

- Failing to provide proper notice of the proposed Amendment to all owners;
- Misrepresenting that the Amendment would "Reflect" or mirror the Maui County Code;
- Proposing and adopting an unreasonable use restriction;
- Failing to exercise due care and diligence in determining whether the use restrictions contained in the Amendment would be in owners' best interest;
- Failing to consider the Amendment's impact on property values;
- Imposing unreasonable and excessive fines;
- Failing to follow proper procedures in adopting the Amendment;
- Failing to follow proper procedures in resolving disputes;
- Misrepresented the voting process;
- Misusing the voting member process;
- Disregarding the advice of counsel and instead following lay opinion and personal desire;
- Engaging in heavy-handed and improper enforcement tactics including the employment of security personnel and a “secret TVR shopper” that has harmed the reputation of the KGE community; and finally,

- Failing to cause the 2014 Amendment to be rescinded even after being advised as to the 2014 Amendment's illegality.

177. The grossly negligent and or intentional wrongful actions and inactions by these Defendants KGECA Board Members have caused Plaintiffs, and each of them, to sustain monetary loss and damage in an amount in excess of $75,000 to be proven at the time of trial.

178. Defendants KGECA Board Members, in committing the above-alleged breach of fiduciary duty, were grossly negligent, acted with malice, fraud or oppression, or with callous disregard of Plaintiffs' legal rights thereby justifying an award of punitive damages.

FOURTH CLAIM FOR RELIEF
(Breach of Contract)

179. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, all allegations contained in the preceding paragraphs, and each and every paragraph following this Claim For Relief.

180. Plaintiffs and Defendants are parties to a contract consisting of the CC&Rs and Bylaws.

181. Defendants breached the contract as set forth herein by, *inter alia*, adopting the 2014 Amendment causing the Plaintiffs damages in an amount to be proven at trial.

182. Defendants breached the contract as set forth herein by, *inter alia*,

failing to submit its claims against Plaintiffs to mediation pursuant to Article XVII, Section 3(c) of the CC&Rs.

183. Plaintiffs request that all charges, including fines, interest, late fees and attorneys fee related to four the alleged violations of the CC&Rs be removed from Plaintiffs account.

184. Alternatively, if Plaintiffs have been charged, Plaintiffs request that all charges, including fines, interest, late fees and attorneys' fee related to the alleged violations of the CC&Rs be removed from Plaintiffs account.

185. Plaintiffs each request compensatory damages in excess of $75,000, punitive damages and recovery of all costs incurred as a result of the breach.

FIFTH CLAIM FOR RELIEF
(Unjust Enrichment Against Halpin and Classic Resorts)

186. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, all allegations contained in the preceding paragraphs, and each and every paragraph following this Claim For Relief.

187. A person who has been unjustly enriched at the expense of another is required to make restitution to the other.

188. Plaintiffs are informed and believe that Defendant HALPIN was the principal author of the 2014 Amendment prohibiting all short-term rentals in KGE.

189. Plaintiffs are informed and believe that Defendant HALPIN is the President and owner of Defendant CLASSIC RESORTS, the entity exclusively

responsible for managing the short term rental program at the nearby KA`ANAPALI ALI`I and numerous other resort properties including luxury homes and condominiums similar to those located in KGE.

190. Plaintiffs are informed and believe that Defendant HALPIN masterminded the 2014 Amendment in order to eliminate competition by preventing Plaintiffs from leasing their homes to his guests on a short term basis.

191. Defendant HALPIN'S undisclosed conflict of interest has allowed him to receive unjust enrichment at the expense of KGECA and Plaintiffs.

192. Plaintiffs are entitled to restitution due to Defendant HALPIN'S breach.

SIXTH CLAIM FOR RELIEF
(Breach of Good Faith and Fair Dealing)

193. Plaintiffs realleges and incorporates by reference, as if fully set forth herein, all allegations contained in the preceding paragraphs, and each and every paragraph following this Claim For Relief.

194. Incorporated into every contract is a duty to act in good faith and with fair dealing in the performance of the terms of any contract.

195. Plaintiffs and Defendants are parties to a contract consisting of the KGE CC&Rs and Bylaws.

196. Defendants breached the contract(s) as set forth herein and failed to act in good faith and with fair dealing by, *inter alia*, adopting the 2014

Amendment.

197. Defendants breached the contract(s) as set forth herein by, *inter alia*, failing to submit its claims to mediation pursuant to Article XVII, Section 3(c) of the CC&Rs.

198. In addition, Defendants HALPIN and HENRY have breached their duty to act in good faith and with fair dealing by using their positions on the KGE Board to pursue self interest.

199. Plaintiffs request compensatory and punitive damages and recovery of all costs as a result of the breaches.

SEVENTH CLAIM FOR RELIEF
(Unfair and Deceptive Trade Practices)

200. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, all allegations contained in the preceding paragraphs, and each and every paragraph following this Claim For Relief.

201. HRS § 480-2 states that unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

202. Defendants are competing unfairly and have acted unfairly, deceptively or conducted themselves unfairly.

203. Plaintiffs are consumers and they are persons injured in their business and property.

204. Plaintiffs have as a direct and proximate result of Defendant's

violation of HRS § 480-2 prohibiting unfair or deceptive acts and practices in conduct of their trade or commerce caused Plaintiffs to sustain special and general damages.

205. Plaintiffs therefore seek treble damages based on violations of HRS § 480-2, as well as attorneys' fees, interests, and costs.

EIGHTH CLAIM FOR RELIEF
Federal RICO (18 USC 1961, et seq.)
(Racketeering Violation)

206. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, all allegations contained in the preceding paragraphs, and each and every paragraph following this Claim For Relief.

207. Plaintiffs are informed and believe and based thereon allege that in or about January 2013 or earlier and continuing to the present day, in the State of Hawaii, Defendants KGECA, SCOTT, HALPIN, ABER, BOYLE, RAGSDALE, HENRY, and CLASSIC RESORTS formed and became associated with an enterprise, as described more fully above, which enterprise was engaged in, and the activities of which affected, interstate and foreign commerce, did unlawfully and knowingly conduct and participate, directly and indirectly, in the conduct of the enterprise's affairs through a pattern of racketeering_activity, as set forth herein.

208. Plaintiffs are informed and believe and based thereon allege that the enterprise had shared purpose and objectives and sought to gain access and control

over the KGECA for personal benefit and financial gain by the Defendants, including KGECA and CLASSIC RESORTS

209. Plaintiffs are informed and believe and based thereon allege that the Defendant KGE Board members employed various methods of communication, including mail and wire fraud, to further their joint plan and scheme to achieve their objectives.

210. For example, Plaintiffs are informed and believe and based thereon allege that Defendants intended for the Proxy Letter to defraud owners, they intended for the Proxy Letter and related communications to be sent and received through the mail or wires, and actually used the mail and wires to further their scheme, causing owners to be defrauded.

211. Plaintiffs are informed and believe and based thereon allege that the Defendants employed conspired and agreed to violate Plaintiffs' rights by adopting and recording the 2014 Amendment and imposing unreasonable and baseless construction and other fines, doing both activities against the advice of their legal counsel and in violation of the law.

212. Defendant HENRY personally inspects the job sites of his competitors, reporting infractions to the Covenants Committee (which he is also a member of) so that rigid fines and variance fees can be imposed.

213. Plaintiffs are informed and believe and based thereon allege that

Defendant HENRY uses his positions on the Board, NCC and Covenants Committee to assure prospective clients that he is the best contractor to build their home and routinely imposes fines and creates difficulty for owners who hire his competition, which as a result, discourages them from seeking business, or agreeing to build, within the KGE community (and Lanikeha specifically).

214. Plaintiff are further informed and believe that Defendant HENRY (and/or one or more of his co-conspirator Defendants) has instructed the KGE General Manager and employee to conduct frequent, and even daily, inspections of homes being constructed by others for the improper purpose of harassing them, making their work more difficult, thereby discouraging other contractors from wanting to do business in Lanikeha, and looking for "technical" or "trivial" violations so as to impose hefty fines on those owners who choose to build with another contractor.

215. Plaintiffs are informed and believe and based thereon allege that Defendants conspired to extort excessive fines through threats and intimidation based on a fraudulent and entirely invalid Amendment demonstrating a pattern of racketeering activity.

216. Plaintiffs are informed and believe and based thereon allege that the Defendants employed conspired and agreed to facilitate HALPIN and CLASSIC RESORTS to engage in acts of unfair competition and fraud against Plaintiffs in

his efforts to eliminate short term rentals in KGE, reducing available options and sending island visitors to short term rental properties he manages as President of Classic Resorts, including the nearby Kaanapali Ali'i.

217. Plaintiffs are informed and believe and based thereon allege that Defendant HALPIN was the author and architect of the 2014 Amendment prohibiting short term rentals in KGE and that he also engineered a misinformation campaign and purported house regulations for the Vintage subdivision, falsely convincing owners that short term rentals were not permitted.

218. Plaintiffs are informed and believe and based thereon allege that Defendants employed conspired and agreed to use their authority as Board member and Voting Member to aid and abet HENRY, HALPIN and CLASSIC RESORTS and the KGECA for purpose of increasing profits.

219. Plaintiffs are informed and believe and based thereon allege that the actions by Defendants have caused damages by reason of the Defendants' racketeering activity in an amount to be proven at the time of trial and that treble damages are appropriate.

NINTH CLAIM FOR RELIEF
(Hawaii RICO Violations — Organized Crime)

220. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, all allegations contained in the preceding paragraphs, and each and every paragraph following this Claim For Relief.

221. HRS § 842 prohibits the collection of an unlawful debt, organized crime including extortion.

222. By wrongfully seeking to deprive Plaintiffs of their property or use of their property, Defendants are engaged in extortion a prohibited offense under HRS § 842.

223. Plaintiffs are entitled to recover their damages, attorneys' fees, and costs as a result.

TENTH CLAIM FOR RELIEF
(42 U.S.C. § 1983)
Constitutional Violation Private Right of Action

224. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, all allegations contained in the preceding paragraphs, and each and every paragraph following this Claim For Relief.

225. 42 U.S.C. § 1983 allows a private right of action for violation of a right secured by the Constitution and laws of the United States if that person was acting under color of state law.

226. A homeowners association board is in effect "a quasi-government entity paralleling in almost every case the powers, duties, and responsibilities of a municipal government." *See, Cohen v. Kite Hill*,142 Cal App 3d 642 (1983).

227. Plaintiffs are informed and believe and based thereon allege that the KGE Defendants acted under color of state and county law, seeking to enforce the

law by self-help and a hired security force. Defendants ABER, SCOTT, AND HENRY are known to personally police the KGE Community, confronting unfamiliar owners, threatening to have people removed even from their own properties.

228. Plaintiffs allege that the Defendants purported to be acting under the color of law when they misrepresented the impact of the Maui Ordinance on the right to rent their own real property and under the guise of a legitimate ordinance changed the CC&Rs of KGE to disallow the Plaintiffs the right to offer their own property for lease on a short term basis.

229. Plaintiffs allege that the invalid 2014 Amendment made by the Defendants to the KGE CC&Rs was both procedurally and substantively defective depriving Plaintiffs of a valuable property right without due process.

230. Plaintiffs have been targeted by the KGECA Board with excessive and unwarranted fines, imposed without due process, and collected under duress.

231. Defendants conspired to pass the unlawful 2014 Amendment and reduced the value of Plaintiffs real property by taking away a fundamental right, the right to lease the home, and deprived owners lost income, prospective opportunity, and have largely rendered the homes unmarketable.

232. Plaintiffs are informed and believe that the KGECA uses intimidation and wrongfully records liens against certain owners' properties to collect fines, not

assessments, and drive owners out of the neighborhood.

233. Plaintiffs are informed and believe that the Defendants actions have reduced property values by more than 40% in the KGE Community.

234. Plaintiffs are therefore entitled to recover their lost profits, damages, attorney fees and costs as a result.

ELEVENTH CLAIM FOR RELIEF
(Uniform Land Sales Practices Act)

235. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, all allegations contained in the preceding paragraphs, and each and every paragraph following this Claim For Relief.

236. Hawai`i's Uniform Land Sales Practices Act, requires that "advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the rules adopted by the director and afford full disclosure." HRS § 484-7(3).

237. The Hawai`i Land Sales Practices Act defines a "Material Change" as "any change which either renders the information contained in the application or public offering statement misleading or which substantively affects the right or obligations of a purchaser or a prospective purchaser of a subdivision lot, such as, but not limited to, change in the nature or usage of the subdivision, or change in the underlying encumbrances or restrictive covenants." HRS § 484-1.

238. By extension, if a material change is a change in the nature or usage

of the subdivision, a material fact is a fact concerning the nature or usage of the subdivision.

239. Hawai`i Land Sales Practices Act provides that "Any person who . . . in disposing of subdivided lands makes an untrue statement of a material fact . . . is liable as provided in this section to the purchaser unless in the case of an untruth or omission it is proved by the subdivider that the purchaser knew of the untruth or omission, or that the person offering or disposing of subdivided lands did not know and in the exercise of reasonable care of a person in such person's occupation could not have known of the untruth or omission, or that the purchaser did not rely on the untruth or omission." HRS § 484-16(a).

240. Defendants are liable under HRS § 484-16, including but not limited to compensation for the premium Plaintiffs paid to purchase or construct their homes to be located in a world class Resort community.

241. Plaintiffs ask for all consequential damages including, but not limited to, attorneys' fees and costs incurred in this litigation, in amounts to be proven at trial.

TWELFTH CLAIM FOR RELIEF
(Condominium Property Act)

242. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, all allegations contained in the preceding paragraphs, and each and every paragraph following this Claim For Relief.

243. The Hawai`i Condominium Property Act makes it unlawful "to make a material misstatement of fact before the commission or to file with the commission any document required by this chapter that is false, contains a material misstatement of fact, or that contains a forger. All documents must be true, complete, and accurate in all respects, including the developer's public report." HRS § 514B-60.

244. Hawai`i's Condominium Property Act further states that "[e]very contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement." HRS § 514B-9.

245. Defendants are liable under HRS § 514B for their material misstatements of fact and statements made in bad faith on which Plaintiffs relied when purchasing property in KGE.

246. In accordance with HRS § 514B-10, all remedies must be liberally administered to the end that the aggrieved parties are put in as good a position as if the other party had fully performed, including but not limited to compensation for the premium that Plaintiffs paid for their homes to be located in the KGE community.

247. Plaintiffs ask for all damages and attorneys' fees and costs incurred in this litigation, in amounts to be proven at trial on behalf of homeowners at KGE.

THIRTEENTH CLAIM FOR RELIEF
(Invasion of Privacy)

248. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, all allegations contained in the preceding paragraphs, and each and every paragraph following this Claim For Relief.

249. Under the U. S. Constitution and the Hawai'i Constitution, every individual is entitled to certain protections, including the right of privacy, which allow citizens to live peaceably and privately without unnecessary and unwarranted interference and intrusion in their home and in their lives.

250. Plaintiffs are informed and believe and based thereon allege that Defendants have used improper surveillance and private policing of Plaintiffs daily activity in an effort to maintain complete control and dominion over the KGE Community and Plaintiffs private property.

251. Defendants routinely employ and discharge Deputy Bob and other agents and employees tasked with ensuring strict compliance with the law, resulting in the unwarranted and illegal intrusion into Plaintiffs' personal lives, trespassing onto Plaintiffs' private properties, taking photographs through their windows or in their back yards unwarranted, and otherwise engaging in entirely illegal and improper invasion of Plaintiffs' right of privacy and use of their homes.

252. Plaintiffs are entitled to enjoin these illegal actions of the defendants

and recover damages, attorney fees and costs as a result.

FOURTEENTH CLAIM FOR RELIEF
(Trespass)

253. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, all allegations contained in the preceding paragraphs, and each and every paragraph following this Claim For Relief.

254. Plaintiffs allege Defendant KGECA Board members and their agents and employees unlawfully entered the owners' homes and exclusive use area of their property without authority, without invitation or permission, and without providing any advance notice whatsoever.

255. Plaintiffs are informed and believe and based thereon allege that the Defendant KGECA Board has refused owners requests to not trespass on their properties and to provide reasonable notice prior to entering upon private property.

256. Plaintiffs are informed and believe and based thereon allege that the Defendant KGECA Board has refused to provide any advance notice of their property inspections.

257. The Defendants' actions constitute trespass and invasion of privacy actionable by law.

258. Plaintiffs seek injunctive relief protecting Plaintiffs and all owners from unwanted privacy invasions and quiet enjoyment disruptions and ordering KGECA to give reasonable notice prior to entering upon an owner's private

property for purpose of inspecting and code enforcement.

259. The full amount of the damages shall be claimed at the time of Trial.

FIFTEENTH CLAIM FOR RELIEF
(Aiding and Abetting)

260. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, all allegations contained in the preceding paragraphs, and each and every paragraph following this Claim For Relief.

261. Plaintiffs are informed and believe and based thereon allege that the Defendants, and each of them, had the specific intent to facilitate the wrongful actions set forth herein.

262. Plaintiffs are informed and believe and based thereon allege that each of the Defendants knowingly and intentionally assisted and encouraged or facilitated and personally participated in the commission of the underlying substantive wrongful acts.

263. Plaintiffs request damages for the defendants' actions in an amount to be proven at the time of Trial.

SIXTEENTH CLAIM FOR RELIEF
(Federal Takings Claim – 5th Amendment)

264. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, all allegations contained in the preceding paragraphs, and each and every paragraph following this Claim For Relief.

265. The Fifth Amendment to the United States Constitution provide, in part, that "[N]or shall private property be taken for public use without just compensation."

266. Plaintiffs are informed and believe and based thereon allege that the act of recording the 2014 Amendment stripped Plaintiffs of valuable property rights under color of law and was a taking without just compensation.

267. Plaintiffs request damages for the defendants' actions in an amount to be proven at the time of Trial.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for judgment against DEFENDANTS, jointly and severally, as follows:

1. For a declaration that the KGECA is governed by and required to comply with Condominium Property Act.

2. For a declaration that the 2014 Amendment is substantively unlawful, void, and, unconstitutional and therefore, of no force and effect.

3. For a declaration that the 2014 Amendment was procedurally and constitutionally defective, unlawful and therefore invalid and void.

4. For a declaration that the Voting Member provision contained in the CC&Rs is for quorum purposes and regular business only and cannot be used to amend the CC&Rs or electing Board members.

5. For a declaration that Plaintiffs are entitled to receive reasonable notice of not less than seven days prior to any property inspections by the KGECA.

6. For rescission of the 2014 Amendment.

7. For a preliminary and permanent injunction preventing and enjoining Defendants from enforcing any of the provisions contained in the 2014 Amendment, including having their private police force and guards enforce the constitutionally defective 2014 Amendment.

8. For a forensic audit of the financial accounting of the books and records of the Association to determine whether and to what extent HENRY, HALPIN, CLASSIC RESORTS or any other DEFENDANTS benefited financially and improperly at the expense of Plaintiffs or the Association.

9. For other and further injunctive relief.

10. For damages in excess of $75,000 according to proof at time of trial.

11. For interest on any damages or restitution awarded at the maximum rate permitted by law.

12. For treble damages as allowed.

13. For punitive damages.

14. For costs of suit and attorney fees to the extent allowed by law; and

15. For such other and further relief as the Court may deem just and proper.

DATED: Honolulu, Hawaii, May 26, 2017.

LAW OFFICES OF GARY Y. SHIGEMURA

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